

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION

BILLY JOE McCAIN
Plaintiff

V.

NO. 2:95CV140-B-B

MISSISSIPPI HOUSING DEVELOPMENT
CORPORATION, INC.
Defendant

V.

FIRST AMERICAN BANK
Garnishee and Interpleader Plaintiff

V.

BILLY JOE McCAIN and UNITED STATES
DEPARTMENT OF AGRICULTURE
Interpleader Defendants

MEMORANDUM OPINION

This cause comes before the court upon the motion to dismiss filed by the interpleader defendant United States Department of Agriculture (hereinafter "USDA"). The court has duly considered the USDA's memorandum and exhibits¹ and is ready to rule.

FACTS

Billy Joe McCain filed suit against the Mississippi Housing Development Corporation (hereinafter "MHDC") and obtained a judgment in the amount of \$5,615.00. MHDC has only paid \$500.00 towards the judgment, leaving a balance of \$5,115.00. During

¹ Neither McCain nor any other party has filed a response to the USDA's motion to dismiss.

collection proceedings, McCain discovered that MHDC had approximately \$23,000.00 in an account with First American Bank. McCain obtained a writ of garnishment against the account in the amount of his unpaid judgment. The USDA, which provided the MHDC with the funds in the account, sent the bank a letter stating that the account could not be garnished and that if the bank honored the garnishment, it would be liable to the USDA for any disbursed funds. Thereafter, First American Bank filed an interpleader action, naming McCain and the USDA as defendants.

LAW

The USDA has raised two points of law in support of its motion to dismiss. It first argues that the United States, as sovereign, is immune from suit except to the extent that it consents to be sued. United States v. Mitchell, 445 U.S. 535, 538, 63 L. Ed. 2d 607, 613 (1980); McQueen v. Bullock, 907 F.2d 1544, 1550 (5th Cir. 1990) cert. denied 499 U.S. 919, 113 L. Ed. 2d 243 (1991). The defense of sovereign immunity applies to departments of the federal government as well. Williamson v. USDA, 815 F.2d 368, 373-374 (5th Cir. 1987). "A waiver of sovereign immunity `cannot be implied but must be unequivocally expressed.'" Mitchell, 445 U.S. at 538, 63 L. Ed. 2d at 613 (citing United States v. King, 395 U.S. 1, 4, 23 L. Ed. 2d 52, 56 (1969)). Upon review of the pleadings, it appears that First American Bank failed to cite any statutory authority in which the USDA waives its right to sovereign immunity.

Furthermore, no party responded to the USDA's motion to dismiss with any support for the proposition that sovereign immunity has been waived. In the absence of any statutory authority cited by the interpleader plaintiff or others, the court finds that the interpleader action should be dismissed.

In the alternative, the USDA argues that program funds of the Rural Economic and Community Development Services are not subject to garnishment. See Palmiter v. Action, Inc., 733 F.2d 1244, 1247-1248 (7th Cir. 1984); Henry v. First Nat'l Bank of Clarksdale, 595 F.2d 291, 308-309 (5th Cir. 1979) cert. denied, 444 U.S. 1074, 62 L. Ed. 2d 756 (1980). The funds held by MHDC in First American Bank are federal funds given to MHDC for the purpose of building apartments in Winstonville, Mississippi. As federal funds, they are not subject to garnishment proceedings until after they are ultimately disbursed for the purpose for which they were appropriated. Palmiter, 733 F.2d at 1247. Therefore, even without the defense of sovereign immunity, the account funds are not subject to McCain's writ of garnishment.

CONCLUSION

For the aforementioned reasons, the court finds that the interpleader action filed by First American Bank against Billy Joe McCain and the United States Department of Agriculture should be dismissed and the remainder of the action (McCain v. MHDC) should

be remanded to the County Court of Bolivar County for any further proceedings.²

An order will issue accordingly.

THIS, the _____ day of January, 1996.

NEAL B. BIGGERS, JR.
UNITED STATES DISTRICT JUDGE

² McCain originally filed suit in the County Court of Bolivar County, Mississippi. When First American Bank filed its interpleader action, it did so in the County Court of Bolivar County, and the two actions were apparently consolidated upon filing. The USDA removed the cause to federal court. Granting the USDA's motion to dismiss only affects the interpleader action regarding the account at First American Bank. There remains an action by McCain against MHDC which is unaffected by this ruling, and which should be remanded to the County Court of Bolivar County for any further proceedings.